**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL REVISION APPLICATION NO. 6 OF 2005**

Shri Venkatesh Anvekar,
s/o Ramchandra Anvekar,
aged 45 years, owner of
the truck, r/o H. No.1020,
Baag, Curchorem, Goa. ... Applicant

versus

State
through the Public Prosecutor. ... Respondent

Mr. N. N. Sardessai, Advocate for the Applicant.

Ms. W. Coutinho, Public Prosecutor for the State/Respondent.

**CORAM : N. A. BRITTO, J.**

**DATE : 1ST SEPTEMBER,2005.**

**ORAL ORDER**

This revision is filed by the accused in C.C. No.41/S/2001 in which he has been convicted and sentenced

under Sections 304(A) and 337 I.P.C. by virtue of Judgment/Order dated 21-7-2004 of the learned Judicial Magistrate, First Class, Canacona and which conviction and sentence have been upheld by the learned 1st Additional Sessions Judge, South Goa, Margao by his Judgment/Order dated 10-3-2005.

2. The accident had taken place on 31-10-2001 at about 15.45 hours at Shelir, Canacona, between the tipper truck No.GA-02-T-7319 driven by the accused and a moped No.GA-02-K-0529 driven by P.W.7/Gopal Varik. Both the vehicles were proceeding in the same direction on a tar road which was about 5.23 metres wide with katcha road on either side being about a metre on the left and about 2 metres on the right. In the said accident, the wife of P.W.7/Gopal Varik died while P.W.7/Gopal Varik suffered simple injuries. The case of the prosecution was that the said accident took place on account of the rash and negligent driving of the said truck by the accused who dashed the same to the said motorcycle by going very close to it.

3. Amongst the witnesses examined by the prosecution there were 4 eye witnesses including P.W.3/Uday Dessai, P.W.5/Satyawan Dessai, P.W.7/the said Gopal Varik and P.W.8/Jaiwant Naik based on whose evidence both the Courts below have convicted and sentenced the accused.

4. At the hearing of this revision, Mr. N. N. Sardessai, the learned Counsel appearing on behalf of the accused has submitted that both the Courts have concurrently erred in coming to the conclusion that the accused was driving the said truck at the time of the accident. It is his submission that no witnesses have stated that the accused was driving the truck at the time of the accident.

5. Admittedly, the plea that the accused was not driving the truck was not taken in the cross-examination of the witnesses or for that matter by the accused in his statement recorded under Section 313 of the Code of Criminal Procedure (Code, for short) or at the time of arguments before the learned trial Court. The plea was taken for the first time before the appellate Court and the learned Additional Sessions Judge

rejected the said plea stating that PW5/Satyawan Dessai had stated that he had seen the accused at the spot after the accused parked his tipper truck away from the accident spot and had come to him and that PW5/Satyawan Dessai had concluded that the accused was driving the truck. The conclusion of PW5/Satyawan Dessai was rational and was arrived at looking at the circumstances of the case and the time factor and his conclusion could be relied upon. The learned Sessions Judge also took note of the fact that the accused in answer to Question No.10 in his statement recorded under Section 313 of the Code had stated that his truck did not dash and thus the accused had admitted that at the relevant time the accused was the driver of the truck.

6. Mr. Sardessai, the learned Counsel appearing on behalf of the accused has referred to the case of **Vijendrajit Ayodhya Prasad Goel** v. **State of Bombay**(AIR 1953 SC 247) and submitted that a conviction could not be based merely on the statement of an accused recorded under Section 342(now Section 313) which cannot be regarded as evidence. The learned Counsel has further submitted that it was not necessary for the

accused to have suggested in the course of cross-examination of the witnesses particularly PW5/Satyawan Dessai that the accused was not driving the said truck at the time of the accident and in support of his submission Mr. Sardessai has placed reliance on the case of **Koli Trikam Jivrha and another** v. **State of Gujarat** (AIR 1969 Gujarat 69) wherein a learned Division Bench of that Court observed that suggestions put in cross-examination are no evidence at all against the accused and on the basis of such suggestions no inference could be drawn against the accused that he admitted the facts referred to in the suggestions. The Court further observed that the accused was entitled to the benefit of the plea set up by the lawyer but it cannot be said that the plea or defence which a lawyer puts forward must bind the accused, the reason that a lawyer appears to defend the accused and has no implied authority to make admissions against his client during the progress of the litigation either for the purpose of dispensing with proof at the trial or incidentally as to any facts of the case. The learned Dvision Bench has also reiterated the time tested principle that the burden lies on the prosecution to prove the guilt of the accused and the suggestions if any cannot stand higher than the statement of the accused under Section 342 of the Code.

7. I have already stated that in holding the accused guilty for the offences under Sections 304(A) and 337 I.P.C. both the Courts below have relied upon the evidence of the said 4 witnesses. There can be no quarrel in the propositions of law set out in the decisions cited hereinabove. PW3/Uday Dessai, was driving his own scooter on the day of accident at a time when the truck had overtaken him and proceeded further. He had categorically stated that the accused was driving the truck at the time of accident although earlier when his statement was recorded by the Police he had not stated this fact in his Police statement though he reiterated that he had stated the said fact to the Police. It was not particularly the case of the accused or for that matter nobody else that PW3/Uday Dessai could not have seen the accused driving the said truck. Moreover, PW5/Satyawan Dessai had also stated that the accused was driving the truck at the time of the accident but in cross-examination he had stated that he had seen the accused after parking the said truck coming to the spot of accident and that he had concluded that the accused was driving the said truck at the time of the accident. It is the submission of Mr. Sardessai, the learned Counsel that the said facts stated by PW5/Satyawan Dessai could at the most create a suspicion against the accused that the accused was driving the said truck and that suspicion however strong it may be could not take place of proof. I am unable to accept the said submission of the learned Counsel. When

PW5/Satyawan Dessai made a statement before the learned trial Court that he had seen the accused parking the said truck and coming to the spot, it is implicit in the said statement that he had seen the accused stopping the said truck and coming to the spot of the accident and thereby coming to the conclusion that it was the accused who was driving the truck at the time of the accident, though PW5/Satyawan Dessai had not seen the accused driving the truck at that particular second when the said truck gave a dash to the scooter driven by PW7/Gopal Varik. That was a most natural inference drawn by PW5/Satyawan Dessai from the facts noticed by him. The evidence of PW3/Uday Dessai who saw the accused going with the truck prior to the dash and the evidence of PW5/Satyawan Dessai who saw the accused parking the truck and coming to the spot of the accident was more than sufficient to conclude that it is the accused who was driving the truck when the accident took place. The learned Additional Sessions Judge in the light of that evidence was certainly also entitled to take into consideration the answer given by the accused to Question No.10 of his statement recorded under Section 313 of the Code in which he had stated that his truck had not dashed the scooter of PW7/Gopal Varik.

8. For reasons stated hereinabove, I find there is no merit in this revision. Both the Courts below have appreciated the prosecution evidence

and have come to the conclusion that the accident took place on account of the negligent driving of the truck by the accused. There is no cause for interference. The revision, therefore, is hereby dismissed.

**N. A. BRITTO, J.**

**RD.**